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SUBJECT: SIERRA LEONE 2009 INVESTMENT CLIMATE STATEMENT

REF: STATE 123907

¶1. Per reftel, please see Embassy Freetown's 2009 Investment Climate Statement below. The document will also be sent via e-mail on the unclassified system. Embassy POC for this report is Political/Economic Officer Amy LeMar (lemaran.@state.gov).

¶A. Openness to Foreign Investment

¶2. The Government of Sierra Leone's (GoSL) Ministry of Trade and Industry, Administrator General and the Sierra Leone Investment and Export Promotion Agency (SLIEPA), are actively working to increase trade and foreign investment.

¶3. Investment Laws: In 2007, Parliament amended the 2005 investment code. This amended act created SLIEPA. It is designed to put Sierra Leone on par with western countries concerning the protection of companies and encouraging and promoting investment and agricultural export. The Ministries of Trade and Industry, Finance, and others are working on an annex to the code, which will detail the investment incentives offered in specific sectors.

¶4. The GoSL is working to build the industrial base to help develop the country and create jobs. Sierra Leone is starting from a low level. Officials point specifically to the need for foreign investment and value-added activity in a number of sectors, but they highlight agricultural production and processing and fisheries production and processing.

¶5. The sanctity of contracts is upheld in law. In practice, the judicial system is slow and inefficient and is widely reported to be corrupt. Even when a party receives judgment in its favor, such judgments may be unenforceable. The UK Government is undertaking a multi-million dollar judicial reform program.

¶6. There are no laws or regulations restricting remittances or repatriation of profits. Outflows are largely for physical capital expenditures and to make payments abroad for such expenses as school fees. Outflows of wealth from Sierra Leone are dominated by the export of diamonds and other minerals, not financial flows.

¶7. There is no industrial policy that discriminates against foreigners nor are there sectors where there are limits or prohibitions on foreign investment or the denial of national treatment. Sierra Leonean authorities do not screen investments.

¶8. Late in 2005, the parliament passed an Anti-Money Laundering Law aimed at regularizing and controlling capital inflows so as to help protect against efforts to destabilize the country or to meddle in politics or political party affairs. In putting the law into effect, the GoSL underscored its desire for ethical investment. The law allows the

importation of \$10,000 in cash. Amounts beyond that must be transferred through the banking system to insure transparency and to make sure that there is a paper trail. Several foreigners were stopped at the Freetown airport in 2008 with large amounts of cash. The police temporarily confiscated the money and deposited it in the Bank of Sierra Leone pending investigations. The banking sector and other financial institutions are working to address some inadequacies in the law, and an amendment is expected to go before Parliament in 2009. The West Africa Bankers Association (WABA) actively encouraged establishing a credit card-friendly environment in Sierra Leone during their annual seminar.

¶9. Acquiring Land: There are two types of land tenure inherited from colonial times. Colonial Land is a freehold system existing in Freetown and the Western Area. Customary Land is a leasehold system, which prevails throughout the rest of the country. There is no land titling system to validate property rights. Because it can be difficult to verify ownership, land is often sold or leased illegally, thus restricting and complicating investment. Furthermore, foreigners cannot own land under either system but can lease land up to 99 years. The Ministry of Lands placed a moratorium on selling land in November, 2008, because of a variety of abuses. The government is receiving support from external donors to redesign the land tenuring system.

¶10. Sierra Leonean citizens can acquire private land (in Freetown and the Western Area only) in a fairly straightforward fashion. State lands can be obtained from the State Lands Committee and the Ministry of Lands via a bureaucratic process that typically takes 65-70 business

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days. Under the Customary Land system, an investor can lease land by entering into a joint venture for economic purposes with the local paramount chief who controls the land in his district. This system is designed to protect the livelihood of indigenous traditional users of the land: householders, subsistence farmers, herders, and small producers.

¶11. Mortgages exist but since there is only a small stock of modern housing and other buildings, the real estate market is minimally active and mortgages are not common. When they exist, mortgages can carry long terms, but are more commonly of short duration and high interest. Short-term bank loans for new construction are more common.

¶12. Privatization: In its privatization program of 24 publicly owned enterprises, the GoSL is looking for investors, especially foreign investors, who will bring significant capital, but also expertise on how to improve the productive and financial performance of the company to be privatized. Foreign investors are invited to participate in every stage of the privatization process. The GoSL does want to avoid asset stripping, however, especially in the banking sector, which has attracted international investor attention.

¶13. Visas: U.S. citizens must have a visa to enter Sierra Leone, obtainable from the Sierra Leonean embassy in Washington or at other Sierra Leonean embassies. Airport visas are available but cost \$100 and are not issued quickly. Foreign investors must have a self-employment/work permit from the Ministry of Labor, which takes six weeks to four months or longer to obtain and costs \$85. A foreigner also must have a residence permit that can be obtained in a few days, but often takes longer. There is an application fee of \$100 and the permit costs \$1,000 for entrepreneurs and \$1,660 for employees.

¶14. Registry and Licenses: Companies have to register but private investors generally do not consider the business registration process as a major impediment to investing. Registration formerly took 2-4 weeks and cost about \$200, not including legal fees that ranged from \$400 to \$5,000, making registration among the most costly in the world. Recent

changes in the law removed the requirement for attorneys to prepare Articles of Corporation or for permission from the Bank of Sierra Leone and advance taxes before registering, which should significantly reduce business registration costs and times. There is a shortage of reliable information on procedures and fees and there are bothersome redundancies. The high cost of business registration combined with lax enforcement results in a high rate of non-compliance and contributes to flourishing informal economic activity.

¶15. There are also three types of mandatory business licenses: general licenses for every business, special activity licenses for executing certain activities (hotel, supermarket, restaurant, factories, construction), and licenses for specific sectors like tourism, telecommunications, and mining.

¶16. Mining and Fisheries: The mining sector is open to foreign investors. The cost of mining licenses depends on the type of activity and citizenship. Non-exclusive prospecting licenses are \$10-50 per square mile. Exclusive prospecting license \$50-200 per square mile, depending on the mineral. Exploration licenses are \$100-400 per square mile for three years. Mine leases are for a maximum of 25 years (renewable for 15 added years) and cost \$500-5,000 per square mile, depending on the mineral.

¶17. For mining investment over \$100 million, the Minister of Mineral Resources can negotiate the conditions, fees, and taxes with the investor on behalf of the Government.

¶18. Some of the other important fees in the mining sector are as follows:

Alluvial Diamond Exporters license: \$40,000/year (\$25,000 half year).

Alluvial Diamond Exporter Agent's certificate: \$5,000/year (\$3,000 half year).

Alluvial Diamond Dealer's license: Non-Citizen \$5,000/year (\$3,000 half year), not including monitoring and rehabilitation fees of \$567/year (\$350/year).

Gold Exporter's license: \$3,000 per year.

Gold Exporter Agent's certificate: \$ 1,000/year.

Gold Dealers license: Non-Citizens \$1000/year.

Gold Mining Company Manager Certificate: Non-Citizen \$167/year.

¶19. In fisheries, vessels must be registered and a fishing

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license obtained. Obtaining an industrial fishing license requires an offshore account in Sierra Leone and the operator must employ 45% Sierra Leoneans as crew members. The licensing process is speedy after the vessel is inspected.

¶20. The following license fees include: For vessels over 250 tons, a shrimp license costs \$60,000 for a year plus royalties of \$18,000 per vessel. Fish trawlers over 250 tons pay \$40,000 per year with royalties of \$15,000. Tuna purse seiners pay \$18,000 per year; tuna long liners pay \$12,000 per year; and purse seiners for small pelagics pay \$15,000 per year. Fish processing ships pay \$20,000 per year.

¶21. Impact of policies and economic trends on FDI: With the end of the war in January 2002, massive infusions of outside assistance helped Sierra Leone to recover and rebuild. GDP growth rates immediately rose to six percent and higher as agriculture recovered, legal diamond production and exports grew, manufacturing showed modest gains, and construction expanded.

¶22. FDI inflows reached \$32.5 million in 1990 before the outbreak of the violent civil strife in 1991, and then declined rapidly for a decade. FDI spiked again in 2000 at \$39 million. It declined again in subsequent years, but jumped to \$83 million in 2005 before slowly falling to \$59 million in 2006. The heightened figures in the last several

years reflect mining investments.

¶23. Important impediments to foreign investment remain. There is a shortage of skilled workers and professionals. Many judges, lawyers, doctors, civil servants, engineers, and other professionals left the country and those who remain often lack the means to carry on their duties properly. Corruption is a problem and the independent Anti-Corruption Commission created in 2000 has yet to have a large impact on the higher levels, though a revised law in 2008 will likely improve its efficacy.

¶24. Sierra Leone's trade policies are relatively open and non-tariff barriers have been eliminated. Tariff rates are converging with those of its neighboring Economic Community of West African States (ECOWAS) and West African Economic and Monetary Union/CFA Franc zone (WAEMU) countries. Import and export licenses have been abolished for all but a small number of products. However, importing and exporting problems have less to do with policy than with practice. Customs clearance is slow, cumbersome, costly, and opaque. The average 14 days for import clearance is among the world's worst. All goods are subject to lengthy and complicated customs procedures, although the GoSL is reportedly considering reducing its customs registration and documentation requirements. Tariff schedules are not always transparent which allows arbitrary assessments that can be challenged only with difficulty as appeals processes are ill defined and lengthy. Sierra Leone continues to use the Brussels Declaration of Value, as it has not yet adopted the WTO Agreement on Customs Valuation. Sierra Leone uses minimum or reference values for rice, flour, sugar, cement, used clothing, and clothing accessories and not having adopted the WTO Agreement leaves customs agents with excessive power and increases the costs of imports.

¶25. Improved economic conditions since the civil war ended in January 2002, along with greater political stability and a more forward-looking government policy, have led to some new foreign investment. The telecommunications sector has seen rapid expansion in mobile telephones. In banking, Malaysian investors have opened the International Commercial Bank and Nigerians investors have opened several banks including the First International Bank, Access Bank, United Bank of Africa, Skye, First International and Guaranteed Trust Banks. Standard Chartered Bank closed during the war but reopened since. The Ecobank Group has also opened a branch in Freetown. The current hike in consumer prices is, in part, the result of the reduced supply of rice and the ban on exporting rice from the major producers and the global financial crisis. The new administration's pro-business pronouncements have encouraged more investors to explore possibilities in Sierra Leone, but most are waiting to see action to back-up President Koroma's statements.

¶26. Mining has expanded greatly with increased legal diamond exports conforming to the Kimberley Process. The reinvestment in rutile and bauxite mining in the southwestern part of the country will put Sierra Leone again among the world's top producers, though an accident in July slowed production in 2008. Between 2004 and 2006 Sierra Rutile received \$12 million from the European Union in start up capital. There

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are also large iron ore deposits, but it is not yet clear whether they can be economically exploited.

¶27. With the aid of the World Bank and key international donors, the GoSL developed its Poverty Reduction Strategic Paper (PRSP), which expired in 2007. It is putting its PRSP plan into effect and international donors -- the World Bank, UK, U.S., EU, and others -- are assisting. The PRSP's three pillars are good governance, security and peace; pro-poor, sustainable economic growth, food security, and job creation; and human resource development. The PRSP II, which is still under review, follows these same precepts.

¶28. On December 15, 2006, the IMF Executive Board found that Sierra Leone had achieved completion under the Heavily Indebted Poor (HIPC) initiative and will provide debt relief in line with the HIPC framework.

¶B. Conversion and Transfer Policies

¶29. There are no restrictions on converting or transferring funds associated with an investment. Investors can withdraw and remit any amount from a commercial bank and have it transferred into any freely convertible currency and at legal market clearing rates. Sierra Leonean banks are well connected with the international banking network. There are no plans to change remittance policies.

¶30. Sierra Leone has a floating exchange rate. The Leone fluctuates, but overall has depreciated slowly over recent years, mainly due to demand for financing current consumption, especially of imported petroleum products, and for national reconstruction.

¶31. Estimated exports in 2008 from the Economist Intelligence Unit (EIU) were \$330 million while imports were \$440 million. Diamond exports were an estimated \$170 million. The current account balance was estimated at negative \$190 million, or about 8.2 percent of GDP.

¶32. There are no legal restrictions on obtaining foreign exchange. The Central Bank conducts frequent foreign exchange auctions, typically on a weekly basis, but limits a single bidder to \$100,000. The auctions are far from sufficient to meet the needs of importers. Additional foreign exchange is available through the banking system, but banks will provide cash only to customers who have deposited cash. Customers who have deposited transfers can obtain only transfers.

¶33. The Investment Code guarantees foreign investors the right to repatriate earnings and the proceeds of sales of assets, and also allows expatriate employees to repatriate earnings.

¶C. Expropriation and Compensation

¶34. There is no history of expropriations in Sierra Leone.

¶D. Dispute Settlement

¶35. Sierra Leone adopted the UK's legal system and common law system. The traditional and Islamic Law systems employed decide many personal property and inheritance issues outside the capital of Freetown. The legal system inherited from the UK protects property and contract rights in the modern sector and there have been few notable issues with property or contract rights affecting US investors. Investors have access to the judicial system, but the system is slow and is widely reported to be subject to financial and political influence. Arbitration clauses in contracts and foreign judgments are respected. Officials point to arbitration and judicial findings in Europe against the Government with which it complied.

¶36. The Law Reform Commission is considering a new Commercial Law, but progress has been slow.

¶37. Sierra Leone is a party to the Convention on Settlement of Investment Disputes Between States and Nationals of Other States (The Washington Convention), which it ratified and put into force in October 1966.

¶38. An important U.S. investor has claimed repeatedly that its competitors are routinely allowed to undervalue its imports, thus paying less in duties and underselling the U.S. firm. The investor's complaint has gone unresolved for several years. Other investors complain that undervaluing goods bound for retail is necessary to reduce what many believe are exorbitant customs duties. The new administration

has engaged the various stakeholders to find a permanent solution, but they have yet to resolve the issue.

E. Performance Requirements and Incentives

¶39. The GoSL has established no performance requirements prescribing mandatory percentages of exports, domestic content, required domestic inputs, the transfer of technology or proprietary knowledge, or limiting access to foreign exchange.

¶40. The annex to the Investment Code law will define the investment incentives to be offered and in various sectors but has not yet been released. Key areas for incentives include agro-processing and value-added activity in fisheries. Both sectors represent important potential in Sierra Leone.

¶41. No performance requirements are in place to require maintenance or expansion of a foreign investment. There are likewise no requirements that nationals own shares that the share of foreign equity is reduced over time, or that technology is transferred under certain terms. There are no offset requirements.

F. Right to Private Ownership and Establishment

¶42. Foreign and domestic entities have the right to establish and own business enterprises and engage in all sorts of remunerative activities. Foreigners are free to acquire and dispose of interests in business enterprises.

G. Protection of Property Rights

¶43. Mortgages exist but are not common as property rights are difficult to secure, given the complexities of the land tenure system. Officially there is complete and open access to the court system if an individual or enterprises thinks its interests to be compromised, but judicial practice is widely reported to be open to political or financial influence.

¶44. The GoSL is taking steps to develop policy and laws that will bring it into compliance with TRIPS. So far, these measures do not include amendments to the copyright law, which is 40 years old. Per WTO agreements, Sierra Leone had until 2006 to fully implement TRIPS but extensions were recently granted to all Least Developed Countries until July 1, 2013.

¶45. Popular music and films are illegally copied and sold on a substantial scale. While some recorded American music and films are affected, this practice mostly affects local and regional music and Nigerian films.

H. Transparency of Regulatory System

¶46. Red tape and excessive delays are gradually being streamlined by SLIEPA. Sierra Leone has moved to 156th in the International Finance Corporation's "Doing Business" ranking, and occupies the 7th position out of the 15 ECOWAS countries. Though Sierra Leone is top-ranked in West Africa in terms of starting a business, issues with licenses, contract enforcement, and high tax rates, are considerable problems.

¶47. The GoSL recognizes the need for greater regulatory clarity and efficiency. The Law Reform Commission is working in that direction, but once updated laws are promulgated, the Government often is slow to develop the administrative rules for their application.

¶48. One notable effort to improve clarity is the Government's establishment of a "one stop center" where investors can obtain all required permits and licenses. To this end, SLIEPA replaced the Sierra Leone Export Development and Investment

Corporation (SLEDIC). SLEDIC was dissolved in December 2007 and SLIEPA has now fully taken over. The agency has encouraged agricultural production and other activities geared towards export; provide exporters with marketing services; identify and encourage potential investors in agriculture and other economic sectors; and promote investment opportunities in Sierra Leone, both locally and internationally.

¶49. The Government does not use taxes or labor, environmental or other standards to inhibit foreign investment.

¶I. Efficient Capital Markets and Portfolio Investment

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¶50. The commercial banking sector is sound. Citizens and foreigners have access to credit under the same market terms. Interest rates are decreasing with the addition of new banks and other financial institutions. They now range between 17-25% Because of the Government's feeble tax revenue generating capabilities, the Central Bank holds frequent (generally weekly) bond auctions. The Government's bonds pay about 25 percent thus crowding out credit flows to production or factor markets.

¶51. As a rule, banks do not invest in equity projects. The land tenure system makes it difficult for a lender to identify the true owner of a property and makes most property useless as loan collateral. An inefficient judicial system and the lack of bankruptcy laws make it very difficult for a lender to recover collateral in the event of a default.

¶52. Credit is rarely a problem for foreign investors as they typically bring in capital from outside the country and have well-established banking relationships that enable them to obtain working and trading capital.

¶53. As of November 2005, the Bank of Sierra Leone estimated the assets of the largest banks as follows:

Rokel Commercial Bank: \$52 million.
Sierra Leone Commercial Bank: \$67 million.
Standard Chartered Bank: \$53 million.
Total assets of the banking sector: \$173 million.
Updated figures are unavailable.

¶54. There is no evidence of cross-shareholding and stable shareholder arrangements in Sierra Leone.

¶J. Political Violence

¶55. There have been no incidents in recent years of politically motivated damage to projects or installations. During the widespread violence that occurred from 1991 to 2002, mining installations and a great deal of physical infrastructure was destroyed. After the war ended in January 2002, a successful demobilization, disarmament, and reintegration (DDR) program followed and a large UN peacekeeping mission guaranteed security. The UN peacekeepers departed in December 2005 and security responsibilities are in the hands of the Sierra Leonean army and police, which the UK government has done much to train and equip. The United Nations Integrated Office in Sierra Leone (UNIOSIL) which oversaw all UN agencies in-country, completed its mandate in September 2008. The follow-on mission, the United Nations Peacebuilding Integrated Office in Sierra Leone (UNIPSIL) is much smaller, and supports government institutions and human rights monitoring activities. Although Sierra Leone is a "fragile state," the country is calm so insurance costs and risk premiums should not reflect the earlier realities of the 1990s.

¶56. Despite the recent coup in Guinea, Sierra Leone remains stable. Disruption of cross border trade with Guinea has a direct effect on availability and cost of foodstuffs and other goods. There is the potential for political rallies to

snarl traffic and damage property. With extensive UK and UN training and new equipment, the Sierra Leone Police have increased capacity to handle such events and performed well during the 2007 national elections. The security agencies are cautiously monitoring the political situation in Guinea to guard against destabilizing spillover of unrest into Sierra Leone.

K. Corruption

¶57. International companies identify corruption as an obstacle to investment, ranking Sierra Leone near other West Africa countries for corruption. Bribes, kickbacks, extortion, and skimming on contracts and payments are common forms of corruption.

¶58. Sierra Leone signed the UN Convention Against Corruption in December 2003 and ratified it in September 2004. The GoSL established the independent Anti-Corruption Commission (ACC) in 2000. It is charged with investigating cases and educating the public to reduce corruption in its many forms. The Anti-Corruption Act was strengthened in a revision in 2008, adding twenty new offenses to the law, increasing the penalties, and giving greater investigative and prosecutorial powers to the ACC.

¶59. The ACC has many pending investigations, but has yet to prosecute under the new law. Efforts in 2008 focused on enhancing internal capacity through reorganizing and

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training, as well as outreach to ministries to stress the importance of fighting corruption and procurement irregularities. The judicial system, which must try the cases the ACC develops, is inefficient and widely believed to be corrupt.

¶60. The Anti-Corruption Act is not used disproportionately against foreigners.

¶61. Sierra Leone's score on Transparency International's (TI) 2008 "Corruption Perception Index" has dropped for the third consecutive year to 1.9, ranking Sierra Leone 158 out of 180 countries (tied with seven other countries). In Sierra Leone, TI operates the National Accountability Group (NAG), an important local NGO. The Campaign for Good Governance is another local watchdog organization.

L. Bilateral Investment Agreements

¶62. Sierra Leone does not have a bilateral investment treaty or taxation treaty with the U.S.

M. OPIC and Other Investment Insurance Programs

¶63. Between 2004 and 2006, the European Union provided \$12 million in start-up funding to Sierra Rutile for the restart and expansion of its mineral sands mine in southwestern Sierra. The company is also exploiting nearby substantial bauxite deposits. Phase One will generate about 110,000 metric tons of rutile (titanium oxide), which is an important ingredient in paints, paper, and plastics. President Koroma commissioned Phase Two, which consists of the second dredge; current production is projected at 200,000 metric tons. Before violent civil strife destroyed the mine's equipment in the 1990s, Sierra Leone was the world's largest rutile producer.

¶64. Sierra Leone is a member of the Multilateral Investment Guarantee Agency (MIGA), part of the World Bank.

N. Labor

¶65. Sierra Leone suffers from a shortage of educated and skilled workers and professionals. Brain drain to Europe and North America has been a significant drag on the economy for

some years.

¶66. Formal sector employment is largely governed by collective bargaining agreements between employers and unions. Such agreements cover various sectors: tourism, commerce, petroleum, manufacturing, media, entertainment, financial services, general services, and public utilities. The statutory minimum monthly salary is \$8.50, but under the collective agreements, the minimum throughout the formal sector is \$24. The minimum figure goes up with qualifications so that a machine operator in manufacturing must be paid a minimum of \$43, rising to \$55 for a senior operator.

¶67. The standard workweek is 40 hours with two consecutive days off mandatory, though security personnel typically work a 60 hour week. Work beyond 40 hours is paid at 50% overtime and required work on rest days is 100% overtime.

¶68. Companies can find an employee redundant for commercial or financial reasons after trying and failing to find alternative employment, in consultation with the union. The employer can discharge workers only on the basis of seniority, with more junior workers being dismissed first. Employers must give two months notice and pay redundancy compensation according to a steeply rising schedule. For example, the employer must pay a worker with 14 years seniority more than two years salary as compensation while the employer owes twenty-year employee more than three and a half years salary as compensation. In practice, evidence suggests these regulations are often ignored due to corruption within the Ministry of Employment.

¶69. Workers can be dismissed for incompetence, inefficiency, violation of rules, or serious offenses in a reasonably straightforward manner. After two written warnings an employee can be dismissed without compensation. There is an appeals process via employer-union consultations and possible intervention by the Commissioner of Labor. The Industrial Court hears dismissal cases and other disputes and heard 170 cases between 2000 and 2003.

¶70. Contributions to the national pension plan, NASSIT, are mandatory. The employer pays 10 percent of the worker's salary and the worker contributes 5 percent.

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¶O. Foreign Trade Zones/Free Trade Zones

¶71. Sierra Leone does not operate a duty free zone, but plans are under way to establish an export-processing zone with duty free status for re-exports.

¶72. The GoSL and Chinese company Henan Guoji Group launched a joint venture to develop an industrial and trade zone. The GoSL provided the land and existing buildings (the old National Workshop facility long slated for privatization) and preferential conditions, while the Chinese company is supplying capital, expertise, and some workers. Construction materials such as sliding windows and roofing materials are currently sold in the local market.

¶P. Foreign Direct Investment Statistics

¶73. According to 2008 UN figures (UNCTAD World Investment Report, 2008) Sierra Leone attracted \$81 million in foreign direct investment in 2007.

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